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renamed and now known as
WACHOVIA MORTGAGE F.S.B.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOHN C. OTTEN

Plaintiff,

vs.

HOME COMING FINANCIAL
MORTGAGE, NAVY FEDERAL
CREDIT UNION, WORLD
SAVINGS,

Defendants.

Case No. 08 CV0254 JM (JMA)

[Hon. Jeffrey T. Miller]

MEMORANDUM OF POINTS AND
AUTHORITIES SUPPORTING
DEFENDANT WORLD SAVINGS'
MOTION TO DISMISS FOR
FAILURE TO AMEND PURSUANT
TO FRCP 41(b)

Date: June 13, 2008
Time: 1:30 p.m.
Ctm: 16

MEMORANDUM OF POINTS AND AUTHORITIES

On April 10, 2008 this Court granted defendant World Savings' motion to dismiss for failure to state a claim. The Court granted plaintiff 20 days leave to amend from the date of entry of the order. The order was entered April 11, 2008, giving plaintiff until May 1, 2008 to amend. Plaintiff did not file an amended pleading.

Pursuant to Federal Rule of Civil Procedure 41(b), the Court may dismiss an action with prejudice when a plaintiff fails to timely amend following an order

1 granting a Rule 12(b) motion. *Yourish v. California Amplifier*, 191 F.2d 983, 986
2 (9th Cir. 1999). Similarly, a Rule 41(b) dismissal is appropriate when a plaintiff
3 refuses to clarify or limit his complaint. *O'Brien v. Sinatra*, 315 F.2d 637, 641-42
4 (9th Cir. 1963).

5 Here, the Court found that the “factual basis for [plaintiff’s] claims is not
6 readily ascertainable from the complaint’s allegations.” (Apr. 10, 2008 Order at 2).
7 The Court found that the complaint did not state a claim or provide a short and
8 plain statement of a claim. (*Id.*). Though the Court granted plaintiff 20 days leave
9 to amend, Plaintiff failed to amend his fatally flawed complaint.

10 Defendant World Savings thus requests an order, pursuant to Rule 41(b),
11 dismissing this action with prejudice.

12
13 Respectfully submitted,

14 Dated: May 2, 2008

15 ANGLIN, FLEWELLING, RASMUSSEN,
16 CAMPBELL & TRYTTEN LLP

17 By: /s/ Robert A. Bailey
18 Robert A. Bailey
19 Attorneys for Defendant WORLD
20 SAVINGS BANK, F.S.B., renamed and now
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22 F.S.B.
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